

UNITED STATES OF AMERICA,

Plaintiff,

v.

GLEN EKBERG,

Defendant.

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Civil Action No. 01 C 50457

Judge Philip Reinhard

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), seeking recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with Source Area 7 ("Area 7") of the Southeast Rockford Groundwater Contamination Site (the "Site").

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with Area 7 and the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with Area 7 and the Site. The response actions will include performance of the remedial action selected in three Records of Decision for the Site, including a Source Control Operable Unit Record of Decision issued in 2002. A copy of the Source Control Operable Unit Record of Decision is attached as Appendix E.

C. The United States previously entered into a separate Consent Decree, an Amended Consent Decree, and a Second Amended Consent Decree relating to the Site in the case captioned United States and the State of Illinois v. City of Rockford, Case No. 98 C 50026 (N.D. Ill.).

D. EPA has determined that the Settling Defendant, Glen Ekberg, is an "owner," as defined in Section 101(20), 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1)



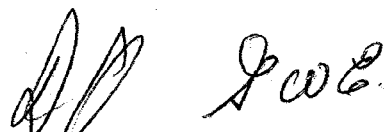
of CERCLA, 42 U.S.C. § 9607(a)(1), of a "facility," as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

E. The Settling Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint. The Settling Defendant contends that the release or threat of release of hazardous substances at and from Area 7 were caused solely by the acts or omissions of a third party, within the meaning of CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3).

F. The United States and Settling Defendant agree that settlement without further litigation and without the adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendant.

G. Under this Consent Decree, the Settling Defendant is agreeing to: (i) pay EPA a total of \$1,231,125 (plus interest) for reimbursement of response costs relating to Area 7, as provided by Consent Decree Section VI; (ii) afford EPA and Illinois EPA access to the Alpine Farm Property and the Hellberg Farm Property as required for taking response actions, as provided by Section VII; (iii) accept possible restrictions on use of groundwater under that Property and use restrictions on certain portions of that Property, as provided by Section VII; and (iv) use due care and cooperate with EPA and Illinois EPA in matters relating to the Alpine Farm Property and the Hellberg Farm Property, as provided by Section VIII.

H. The United States is agreeing not to sue or take other action against the Settling Defendant or any Subsequent Owner of the Alpine Farm Property or the Hellberg Farm Property for additional response costs or response actions relating to Area 7, subject to the provisions of Sections IX and X. By entry into this Consent Decree, the Settling Defendant shall also receive statutory contribution protection as described in Section XII.



I. The Parties agree and this Court, by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. United States and Settling Defendant. This Consent Decree is binding upon the United States and upon Settling Defendant and Settling Defendant's heirs, successors, and assigns. Any change in status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under Section VI (Payments), Section VII (Access and Institutional Controls), Section VIII (Due Care and Cooperation), and Section XI (Covenants By Settling Defendant and Subsequent Owners) of this Consent Decree.

3. Subsequent Owners.

a. The Parties to this Consent Decree also agree that a third party that acquires an ownership interest in all or any portion of the Alpine Farm Property or the Hellberg

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Farm Property after the date of lodging of this Consent Decree may agree to accept certain benefits and obligations as a "Subsequent Owner" under of this Consent Decree by providing the United States a duly-executed Subsequent Owner Assent Form, in the form prescribed by Consent Decree Appendix F. Any such third party shall submit an executed Subsequent Owner Assent Form in accordance with Consent Decree Section XIX (Notices and Submissions) and the third party shall be deemed a Subsequent Owner upon receipt of the executed Form by the United States. Upon receipt of an executed Subsequent Owner Assent Form, the United States shall file a copy of the Form with the Court as a non-material modification to this Consent Decree.

b. As specified by this Consent Decree, a Subsequent Owner shall, among other things: (i) be covered by provisions applicable to Subsequent Owners in Consent Decree Section IX (Covenant Not to Sue By the United States), Section X (Reservations of Rights by the United States), and Section XII (Effect of Settlement/Contribution Protection); and (ii) be bound to comply with the requirements applicable to Subsequent Owners under Consent Decree Section VII (Access and Institutional Controls), Section VIII (Due Care and Cooperation), and Section XI (Covenants By Settling Defendant and Subsequent Owners).

c. As expressly provided by this Consent Decree, the pertinent portions of this Consent Decree shall be binding upon any Subsequent Owner and upon any Subsequent Owner's heirs, successors, and assigns. Any change in status of a Subsequent Owner, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter that Subsequent Owner's responsibilities under Section VII (Access and Institutional Controls), Section VIII (Due Care and Cooperation), and Section XI (Covenants By Settling Defendant and Subsequent Owners) of this Consent Decree.

IV. STATEMENT OF PURPOSE

4. General Objectives. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to Area 7 that allows Settling Defendant to provide valuable consideration to the United States to resolve Settling Defendant's alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for injunctive relief with regard to Area 7 and for response costs incurred and to be incurred at or in connection with Area 7, thereby reducing litigation relating to Area 7;

b. to obtain settlement with Settling Defendant for an appropriate portion of the response costs incurred and to be incurred at or in connection with Area 7 by the EPA Hazardous Substance Superfund, and by other persons;

c. to provide for access and institutional controls as EPA determines necessary to implement, ensure non-interference with, or ensure the protectiveness of, the removal and/or remedial measures to be performed at the Site, as specified by Consent Decree Section VII (Access and Institutional Controls);

d. to provide for contribution protection for Settling Defendant with regard to Area 7 pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), in accordance with Section XII herein; and

e. to extend certain benefits and obligations of the Consent Decree to Subsequent Owners, as expressly provided by this Consent Decree.

V. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree

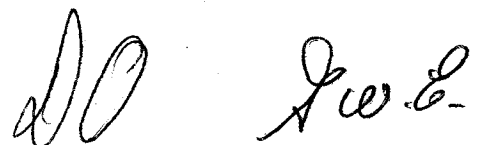


that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Alpine Farm Property" shall mean the following parcels of real property owned by the Settling Defendant within Section 5 in Township 43 North, Range 2 East of the Third Principal Meridian, in Winnebago County, Illinois, lying southerly of the Illinois Central Railroad right of way, as depicted on the map attached hereto as Appendix A: (i) Parcel Identification Number 16-05-152-002; (ii) Parcel Identification Number 16-05-327-006; (iii) Parcel Identification Number 16-05-301-003; and (iv) Parcel Identification Number 16-05-302-002.

b. "Area 7" shall mean Source Area 7 of the Southeast Rockford Groundwater Contamination Site, located in the southeastern portion of the Site, northwest of the intersection of Alpine and Sandy Hollow Road, in the area near the eastern end of Balsam Lane. Area 7 contains Ekberg Park, a municipal park owned and maintained by the Rockford Park District. Area 7 also includes agricultural land and wooded areas adjacent to the Park that are owned by the Settling Defendant, including two small valleys located on the Alpine Farm Property that merge at the base of the hillside on the south of the area and feed into an unnamed creek that borders the north side of Area 7. Residential areas border Area 7 to the east and west. A map showing Area 7 and the Site is attached hereto as Appendix B. Solely for the purpose of this Consent Decree, the term "Area 7" shall also include any migration of hazardous substances from Source Area 7 to other portions of the Site, including any such migration in groundwater.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*



d. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

f. "Effective Date" shall mean the effective date of this Consent Decree as provided by Section XX.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Hellberg Farm Property" shall mean the following parcel of real property owned by the Settling Defendant within Section 6 in Township 43 North, Range 2 East of the Third Principal Meridian, in Winnebago County, Illinois, lying southerly of the Illinois Central Railroad right of way, as depicted on the map attached hereto as Appendix A: Parcel Identification Number 16-06-276-001.

j. "Illinois EPA" shall mean the Illinois Environmental Protection Agency and any successor departments, agencies or instrumentalities of the State.

k. "Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of

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interest is subject to change on October 1 of each year.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

m. "Parties" shall mean the United States and the Settling Defendant. In the event that a third party becomes a Subsequent Owner under this Consent Decree, the Subsequent Owner shall be deemed one of the Parties to this Consent Decree during the Subsequent Owner's period of ownership.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendant" shall mean Glen W. Ekberg.

p. "Site" shall mean the Southeast Rockford Groundwater Contamination Site as defined in the Records of Decision for the Site and any migration of hazardous substances therefrom. A map showing the Site is attached hereto as Appendix B.

q. "Soil Area of Concern" shall mean the portion of the Site depicted on the map attached as Appendix C. The Settling Defendant shall engage a qualified firm to survey and prepare a legal description of the Soil Area of Concern, and shall submit the survey and legal description to the United States in accordance with Section XIX (Notices and Submissions) of this Consent Decree. After confirming the accuracy of the survey and legal description, the United States shall file the legal description of the Soil Area of Concern with the Court as a non-material modification to this Consent Decree under Paragraph 33.

r. "State" shall mean the State of Illinois, including its departments, agencies and instrumentalities.

s. "Subsequent Owner" shall mean any person who: (i) acquires any legal or



equitable ownership interest in any portion of the Alpine Farm Property or the Hellberg Farm Property after the date of lodging of this Consent Decree, including any fee interest, leasehold interest, mortgage interest, or beneficial interest in any trust that holds legal title to such Property; and (ii) provides the United States a duly-executed Subsequent Owner Assent Form as provided by Paragraph 3 of this Consent Decree.

t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. PAYMENTS

6. Payments by the Settling Defendant.

a. Initial Payment. By no later than September 1, 2006 or within 10 days after the Effective Date of this Consent Decree (whichever is later), the Settling Defendant shall pay the EPA Hazardous Substance Superfund \$250,000. In the event the payment required by this Subparagraph 6.a is not made when due, the Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Subsequent Payment. By no later than July 1, 2007 or within 10 days after the Effective Date of this Consent Decree (whichever is later), the Settling Defendant shall pay the EPA Hazardous Substance Superfund an additional \$981,125, plus Interest on that principal amount that accrues between the Effective Date and the date the payment is made.

7. Payments under this Section VI shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions to be provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's

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Office in the Northern District of Illinois following lodging of the Consent Decree.

8. At the time of any payment, Settling Defendant shall send notice that such payment has been made to:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
DJ No. 90-11-3-945/1
P.O. Box 7611
Washington, D.C. 20044-7611

and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

Such notice shall reference the EPA Region and Site/Spill ID Number 05 DK, DOJ case number 90-11-3-945/1, and the Northern District of Illinois civil action number for this case.

9. The total amount to be paid by Settling Defendant pursuant to this Section VI shall be deposited by EPA in the Southeast Rockford Site Area 7 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Source Area 7 of the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. ACCESS AND INSTITUTIONAL CONTROLS

10. Generally.

a. The Parties acknowledge that, as of the date of lodging of this Consent Decree, the Settling Defendant owns and/or controls the Alpine Farm Property and the Hellberg Farm Property, which encompass part of the Site. More specifically, as of the date of lodging,

the Settling Defendant owns the sole beneficial interest in Amcore Bank Trust No. 73-5734, which holds legal title to the parcels that comprise the Alpine Farm Property. As of the date of lodging, the Settling Defendant owns a joint tenancy interest in the parcel that comprises the Hellberg Farm Property.

b. The Parties acknowledge that the Settling Defendant and any Subsequent Owner of the Alpine Farm Property or the Hellberg Farm Property will need to provide access to any portion of such property. In addition, the Parties acknowledge that the Settling Defendant and any Subsequent Owner of the Alpine Farm Property or the Hellberg Farm Property will need to accept water use restrictions for any portion of such property and will need to accept land use restrictions for the Soil Area of Concern portion of the Alpine Farm Property as EPA determines that such restrictions are necessary to implement, ensure non-interference with, or ensure the protectiveness of, the removal and/or remedial measures to be performed at the Site.

11. Agreement to Provide Access and Agreement Not to Interfere with Removal or Remedial Measures to be performed at the Site.

a. Commencing on the date of lodging of this Consent Decree, the Settling Defendant and any Subsequent Owner shall provide the United States and the State and their representatives, including EPA and Illinois EPA and their contractors, with access at all times to the Alpine Farm Property and the Hellberg Farm Property for the purpose of conducting any response activity related to the Site, including, but not limited to the following activities:

- i. Monitoring, investigation, removal, remedial or other activities at the Site;
- ii. Verifying any data or information submitted to the United States or the State;

- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Assessing Settling Defendant's or the Subsequent Owner's compliance with this Consent Decree;
- vii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and
- viii. Accessing equipment associated with the response activities for repair if it should malfunction.

b. As provided by CERCLA Section 104(e)(4)(B), 42 U.S.C.

§ 9604(e)(4)(B), if EPA obtains any samples at the Alpine Farm Property or the Hellberg Farm Property, EPA shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished to the owner, operator, tenant, or other person in charge, if such person can be located. For property owned by the Settling Defendant, such samples or results shall be furnished to the Settling Defendant's designated contractor, if such person can be located.

c. Commencing on the date of lodging of this Consent Decree, the Settling Defendant (and his agents, assigns and invitees) and any Subsequent Owner (and his or her agents, assigns, and invitees) shall refrain from using the Alpine Farm Property and the Hellberg

Farm Property in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the removal or remedial measures to be performed at the Site.

12. Environmental Protection Easement and Declaration of Restrictive Covenants Addressing Access Rights and Land/Water Use Restrictions.

a. The Settling Defendant shall take all actions necessary to ensure that an Environmental Protection Easement and Declaration of Restrictive Covenants (the "Easement"), in substantially the form attached hereto as Appendix F, is executed and recorded with the Winnebago County Recorder.

b. The Parties agree that the Easement shall create an easement, running with the land, that grants: (i) a right of access to all portions of the Alpine Farm Property for the purpose of conducting response activities at the Site listed in Subparagraph 11.a; (ii) a right to enforce specified restrictions on the use of groundwater beneath all portions of the Alpine Farm Property; and (iii) a right to enforce specified restrictions on the use of the land within the Soil Area of Concern portion of the Alpine Farm Property, as depicted in the map attached as Appendix C to this Consent Decree. The Parties acknowledge that it may nonetheless be appropriate to construct a road passing through the Soil Area of Concern in the area shown on the map attached as Appendix C, so long as construction and use of the road does not interfere with or adversely affect the implementation, integrity or protectiveness of the removal and/or remedial measures to be performed at the Site.

c. The Parties agree that the Easement shall grant access rights and the rights to enforce the land/water use restrictions referenced in Subparagraph 12.b to: (i) the United States, on behalf of EPA, and its representatives, as third party beneficiaries; (ii) the State, on behalf of Illinois EPA, and its representatives, as third party beneficiaries; and/or (iii) other

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appropriate third party beneficiaries designated by EPA.

d. Within 60 days of the Effective Date of this Consent Decree, the Settling Defendant shall submit to EPA, for review and approval, a draft Easement conforming to the requirements outlined in this Paragraph 12.

e. ~~A~~ Within 30 days after receipt of EPA's written approval of the draft Easement, the Settling Defendant shall have the Easement executed and recorded. Within 10 days of recording the Easement, Settling Defendant shall provide EPA a certified copy of the original instrument showing the clerk's recording stamps.

13. If EPA determines that land/water use restrictions as described in Subparagraph 12.b should be imposed through state or local laws, regulations, ordinances or other governmental controls to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant and any Subsequent Owner shall cooperate with EPA's and the State's efforts to secure such governmental controls. Settling Defendant or any Subsequent Owner shall record the notice of any such governmental controls within 10 days of EPA's approval of the notice. Settling Defendant or the Subsequent Owner shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

14. Required Notices Before Grant or Transfer

a. Notice to Grantees and/or Transferees. At least 15 days prior to the conveyance or transfer of any interest in any portion of the Alpine Farm Property or the Hellberg Farm Property – including, but not limited to, fee interests, leasehold interests, mortgage interests, or beneficial interests in any trust that holds legal title to such Property – the Settling Defendant or any Subsequent Owner shall give the proposed grantee or transferee a copy of the

Subsequent Owner Assent Form attached as Appendix F to this Consent Decree.

b. Notice to EPA. At least 15 days prior to the conveyance or transfer of any interest in any portion of the Alpine Farm Property or the Hellberg Farm Property – including, but not limited to, fee interests, leasehold interests, mortgage interests, or beneficial interests in any trust that holds legal title to such Property – the Settling Defendant or any Subsequent Owner shall: (1) give EPA written notice of the proposed conveyance or transfer, including the name and address of the proposed grantee or transferee, and the date on which the party giving EPA such notice gave the proposed grantee or transferee a copy of the Subsequent Owner Assent Form attached as Appendix F to this Consent Decree.

15. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities related thereto under CERCLA and any other applicable statute or regulations.

VIII. DUE CARE AND COOPERATION

16. Nothing in this Consent Decree shall be construed to relieve Settling Defendant or any Subsequent Owner of Settling Defendant's and any Subsequent Owner's duty to exercise due care with respect to hazardous substances at the Site or Settling Defendant's or any Subsequent Owner's duty to comply with all applicable laws and regulations.

17. Settling Defendant and any Subsequent Owner agree to cooperate fully with EPA and its contractors and designees in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize interference with the operations of Settling Defendant or any Subsequent Owner by such entry and response. In the event that Settling Defendant or any Subsequent Owner becomes aware of any action or

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occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant or the Subsequent Owner shall: (i) in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release; and (ii) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release.

IX. COVENANTS NOT TO SUE BY UNITED STATES

18. Except as specifically provided in Section X (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against Settling Defendant pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), relating to Area 7 (including any response action taken or to be taken and response costs incurred or to be incurred to address a release or a threat of release of a hazardous substance at or from Area 7). Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the Settling Defendant's full payments as required by Section VI of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon EPA's certification of completion of the remedial action at the Site. These covenants are conditioned upon the satisfactory performance by Settling Defendant of all obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and do not extend to any other person; provided, however, that these covenants not to sue (and the reservations in Section X) shall also apply to any Subsequent Owner, but only to the extent that liability is sought to be imposed on the Subsequent Owner based upon the Subsequent Owner's alleged ownership or operation of any portion of the Alpine Farm Property or the Hellberg Farm

Property and only so long as the Subsequent Owner complies with the requirements applicable to Subsequent Owners under Section VII (Access and Institutional Controls), Section VIII (Due Care and Cooperation), Section XI (Covenants By Settling Defendant and Subsequent Owners) of this Consent Decree.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

19. The covenants not to sue set forth in Section IX do not pertain to any matters other than those expressly specified in Section IX. The United States also reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant and any Subsequent Owner with respect to the following:

- a. any liability under any laws other than Sections 106 and 107(a) of CERCLA;
- b. liability for damages for injury to, destruction of, or loss of natural resources;
- c. any liability of the Settling Defendant arising from future disposal of hazardous substances at the Alpine Farm Property or the Hellberg Farm Property or from the Settling Defendant's future disposal of hazardous substances elsewhere at the Site;
- d. any liability of a Subsequent Owner arising from past or future disposal of hazardous substances at the Site;
- e. any criminal liability;
- f. any liability based on a failure by Settling Defendant or a Subsequent Owner to meet a requirement of this Consent Decree, including, but not limited to, liability as a result of failure to exercise due care with respect to hazardous substances at the Site as required by Section VIII.

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20. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the remedial action at the Site:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received in whole or in part,

and these previously unknown conditions or information together with other relevant information indicate that the remedial action is not protective of human health or the environment. The Settling Defendant reserves all defenses to any action or claim pursuant to this Paragraph.

21. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the remedial action at the Site:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received in whole or in part,

and these previously unknown conditions or information together with other relevant

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information indicate that the remedial action is not protective of human health or the environment. The Settling Defendant reserves all defenses to any action or claim against it pursuant to this Paragraph.

22. For purposes of Paragraph 20, the information and the conditions known to EPA shall include only that information and those conditions considered or possessed by employees of EPA or its authorized contractors (including Illinois EPA and its contractors) as reflected in any information contained in EPA's file for the Southeast Rockford Groundwater Contamination Site as of the date of lodging of this Consent Decree. For purposes of Paragraph 21, the information and the conditions known to EPA shall include only that information and those conditions considered or possessed by employees of EPA or its authorized contractors (including Illinois EPA and its contractors) as reflected in any information contained in EPA's file for the Southeast Rockford Groundwater Contamination Superfund Site as of the date of certification of completion of the remedial action at the Site.

XI. COVENANTS BY SETTLING DEFENDANT AND SUBSEQUENT OWNERS

23. The Settling Defendant and any Subsequent Owner covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to Area 7 (including any response action taken or to be taken and response costs incurred or to be incurred to address a release or a threat of release of a hazardous substance at or from Area 7) or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with Area 7,

including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Area 7.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 27 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 19.a, 19.b, 19.c, or 19.d but only to the extent that Settling Defendant's or the Subsequent Owner's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

25. Waiver of Claims. The Settling Defendant and any Subsequent Owner agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Defendant or a Subsequent Owner may have against any other person if such person asserts a claim or cause of action relating to the Site against the Settling Defendant or the Subsequent Owner; nor shall it apply to any defense, claim, or cause of action arising out of action undertaken by the Settling Defendant or the Subsequent Owner in response to a release or threat of release in accordance with Paragraph 17 of this

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Consent Decree.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as expressly provided in Paragraph 25 (Waiver of Claims) and Paragraphs 18 and 28 (as they relate to Subsequent Owners), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as expressly provided in Paragraph 25 (Waiver of Claims) and Paragraphs 18 and 28 (as they relate to Subsequent Owners), the United States, the Settling Defendant, and any Subsequent Owner each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Defendant and any Subsequent Owner shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Section IX.

28. Statutory Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree.

Any Subsequent Owner is similarly entitled to protection from contribution actions or claims as provided by Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree, but only to the extent that liability is sought to be imposed on the Subsequent Owner based upon the Subsequent Owner's alleged ownership or operation of any portion of the Alpine Farm Property or the Hellberg Farm Property and only so long as the Subsequent Owner complies with the requirements applicable to Subsequent Owners under Section VII (Access and Institutional Controls) and Section VIII (Due Care and Cooperation), Section XI (Covenants By Settling Defendant and Subsequent Owners) of this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, by the United States or any other person, for Area 7.

XIII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

29. Non-Compliance with Consent Decree Obligations.

a. Non-Compliance with Payment Obligations. In addition to the Interest required to be paid under Paragraph 6, if any payment required by Paragraph 6 is not made when due, the Settling Defendant shall also pay a stipulated penalty of \$500 per day through the date of full payment.

b. Non-Compliance with Certain Other Obligations. The Settling Defendant or any Subsequent Owner shall be liable for a stipulated penalty of \$500 per day for any failure by such person to comply with the requirements of Section VII (Access and Institutional Controls) or Section VIII (Due Care and Cooperation).

c. Other Remedies for Non-Compliance. If Settling Defendant fails to make full payment as required by Section VI or if the Settling Defendants or a Subsequent Owner fails to comply with the requirements of Section VII or VIII of this Consent Decree, the United States

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may, in addition to any other available remedies or sanctions, bring an action against the Settling Defendant or a Subsequent Owner seeking injunctive relief to compel compliance with this Consent Decree and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for the failure to comply.

d. Accrual of Stipulated Penalties. Any stipulated penalties under the Consent Decree shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (i) with respect to a decision by EPA under Subparagraph 31.b during the period, if any, beginning on the 21st day after the date that the Settling Defendant's or a Subsequent Owner's Statement of Position is received until the date that EPA issues a final administrative decision regarding such dispute; or (ii) with respect to judicial review by this Court of any dispute under Subparagraph 31.b, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties and/or stipulated damages for separate violations of this Consent Decree.

e. Payment of Stipulated Penalties. All penalties accruing under this Section shall be due and payable to the EPA Hazardous Substances Superfund within 30 days of the Settling Defendant's or a Subsequent Owner's receipt of a written demand for payment by EPA, unless the Settling Defendant or the Subsequent Owner invokes the dispute resolution procedures under Section XIV (Retention of Jurisdiction and Dispute Resolution). All payments under this Section shall be paid by certified or cashier's check(s), shall indicate that the payment is for stipulated penalties, and shall be submitted to EPA in accordance with the payment

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instructions included in EPA's demand for payment.

XIV. RETENTION OF JURISDICTION AND DISPUTE RESOLUTION

30. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

31. Dispute Resolution. The dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve disputes between the Plaintiff and the Settling Defendant (or between the Plaintiff and any Subsequent Owner) arising under or with respect to this Consent Decree. However, the procedures set forth in this Paragraph shall not apply to actions by the Plaintiff to enforce obligations of the Settling Defendant or of a Subsequent Owner that have not been disputed in accordance with this Paragraph.

a. Informal Dispute Resolution. Any dispute under this Paragraph shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 10 days from the time the dispute arises, unless it is extended in writing by EPA. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

b. Formal Dispute Resolution. In the event that the Parties cannot resolve any dispute under this Paragraph by informal negotiations under the preceding Subparagraph, the formal dispute procedures outlined by this Subparagraph shall apply.

(1) The position advanced by EPA shall be considered binding unless, within 15 working days after the conclusion of the informal negotiation period, the Settling Defendant or the Subsequent Owner invokes formal dispute resolution procedures by serving on the Plaintiff, in accordance with Section XIX (Notices and Submissions), a written Statement of Position on the matter in dispute.



(2) Following receipt of the Settling Defendant's or the Subsequent Owner's Statement of Position, EPA will issue an administrative decision resolving the dispute. EPA shall compile and maintain an administrative record of the dispute containing the Settling Defendant's or the Subsequent Owner's Statement of Position and EPA's administrative decision. EPA's administrative decision shall be binding on the Settling Defendant or the Subsequent Owner unless, within 10 days of receipt of the decision, the Settling Defendant or the Subsequent Owner files with the Court and serves on EPA a motion for judicial review of EPA's administrative decision, based on the administrative record compiled and maintained by EPA. Any such motion filed by the Settling Defendant or the Subsequent Owner shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. EPA shall provide the Court a copy of the administrative record of the dispute, and may file a response to the Settling Defendant's or the Subsequent Owner's motion.

c. Effect of Invoking Dispute Resolution. The invocation of dispute resolution procedures under this Paragraph shall not extend, postpone, or affect in any way any obligation of the Settling Defendant or a Subsequent Owner under this Consent Decree, not directly in dispute, unless EPA agrees otherwise or unless the Court determines otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. In the event that the Settling Defendant or the Subsequent Owner does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Consent Decree Section XIII.

XV. INTEGRATION/APPENDICES

32. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following is attached and incorporated into this Consent Decree:

"Appendix A" is a map of the Alpine Farm Property and the Hellberg Farm Property.

"Appendix B" is a map of Source Area 7 and the Site.

"Appendix C" is a map of the Soil Area of Concern.

"Appendix D" is the form of Easement referenced in Section VII.

"Appendix E" is the Source Control Operable Unit Record of Decision.

"Appendix F" is the prescribed form of the Subsequent Owner Assent Form.

XVI. CONSENT DECREE MODIFICATIONS

33. There shall be no material modifications to the terms of this Consent Decree without written agreement of the Parties and approval of the Court. Non-material modifications of the Consent Decree may be made by written agreement of the Parties, without approval of the Court, but shall be filed in this action. As specified by Paragraph 3, a third party may become a Subsequent Owner under this Consent Decree by providing the United States a duly-executed Subsequent Owner Assent Form, and such Form shall be a non-material modification of the Consent Decree, without approval of the Court, but it shall be filed in this action.

XVII. RELEASE OF LIEN

34. Subject to the Reservation of Rights in Section X of this Consent Decree, upon full payment of the amount specified in Section VI, EPA agrees to release any lien it may have

on the Alpine Farm Property and/or the Hellberg Farm Property under Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to Settling Defendant.

XVIII. PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper or inadequate. The Settling Defendant and any Subsequent Owner consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XIX. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Consent Decree, written notice is required to be given or a submission is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States and the Settling Defendant, respectively.



As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-945/1)

U.S. Mail:

P.O. Box 7611
Washington, D.C. 20044-7611

Overnight Delivery Service:

601 D Street, N.W. – Room 2121
Washington, DC 20004

As to EPA:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

As to the Settling Defendant:

Daniel F. O'Connell
O'Connell Law Office
101 West Hamilton St.
Geneva, IL 60134

Counsel for Glen Ekberg

As to a Subsequent Owner:

To the person designated to receive notices and to accept service on the
Subsequent Owner Assent Form

XX. EFFECTIVE DATE

37. The effective date of this Consent Decree shall be the date of entry by this Court,

following public comment pursuant to Section XVIII.

XXI. SIGNATORIES/SERVICE

38. Each undersigned representative of Settling Defendant to this Consent Decree and
the Assistant Attorney General for the Environment and Natural Resources Division of the

United States Department of Justice, or her delegate, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Settling Defendant and Subsequent Owners hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

40. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XXII. DISCLAIMER

41. This Consent Decree in no way constitutes a finding by EPA as to the risks to human health and the environment that may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

SO ORDERED THIS ____ DAY OF _____, ____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Glen Ekberg, Case No. 01 C 50457 (N.D. Ill.), relating to the Southeast Rockford Groundwater Contamination Superfund Site:

FOR THE UNITED STATES OF AMERICA

Date: _____

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

MARY REED
FRANCIS J. BIROS
Trial Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
U. S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

PATRICK J. FITZGERALD
United States Attorney

Date: _____

MONICA MALLORY
Assistant United States Attorney
Northern District of Illinois
308 W. States St., Suite 300
Rockford, IL 61101

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Glen Ekberg, Case No. 01 C 50457 (N.D. Ill.), relating to the Southeast Rockford Groundwater Contamination Superfund Site:

Date: _____

BHARAT MATHUR
Acting Regional Administrator, Region V
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

Date: _____

THOMAS TURNER
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

[Handwritten signatures]

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Glen Ekberg, Case No. 01 C 50457 (N.D. Ill.), relating to the Southeast Rockford Groundwater Contamination Superfund Site:

FOR DEFENDANT GLEN W. EKBERG

Date: 5/9/06

GLEN W. EKBERG X 11

Date: 5/9/06

DANIEL F. O'CONNELL
O'Connell Law Office
101 West Hamilton St.
Geneva, IL 60134

Counsel for Glen Ekberg

Date: 5/11/06

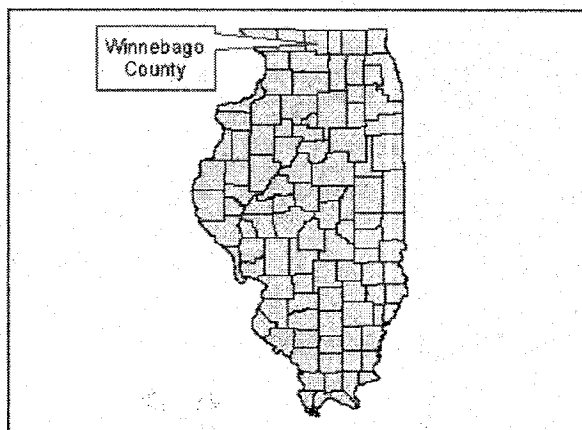
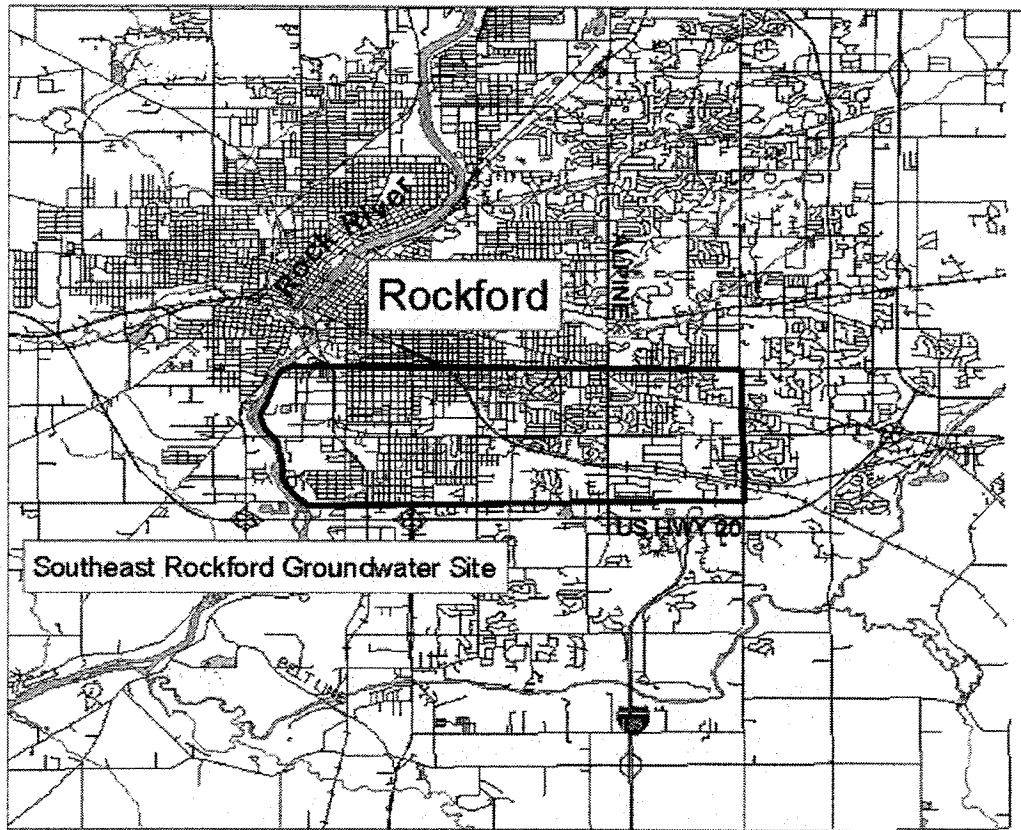
JAMES F. HESS
Attorney at Law
10989 Shaw Road
Rockford, IL 61114

Counsel for Glen Ekberg

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Daniel F. O'Connell
O'Connell Law Office
101 West Hamilton St.
Geneva, IL 60134

Approximate Location of Southeast Rockford Groundwater Site



Legend

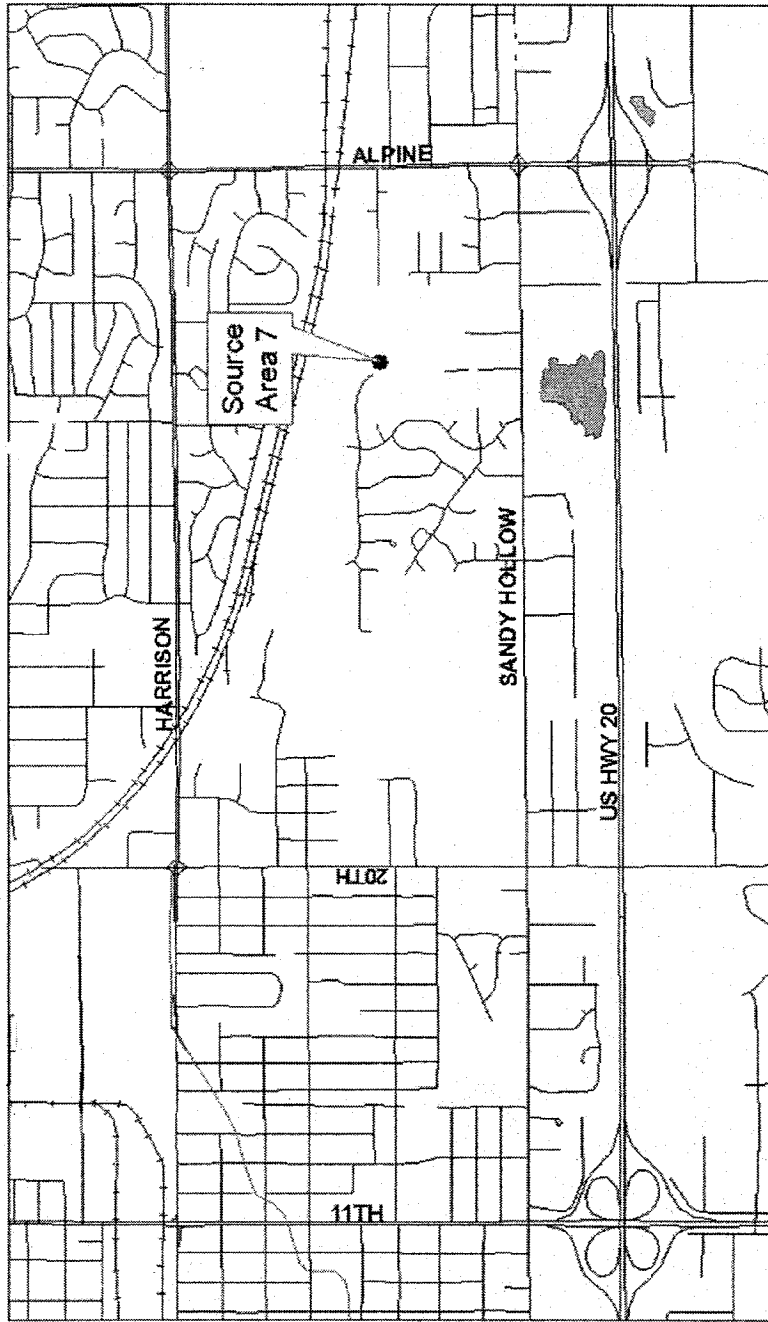
- Roads
- Rails
- Surface Water



RP Geo-E

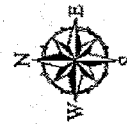
144

Approximate Location of Source Area 7



Legend

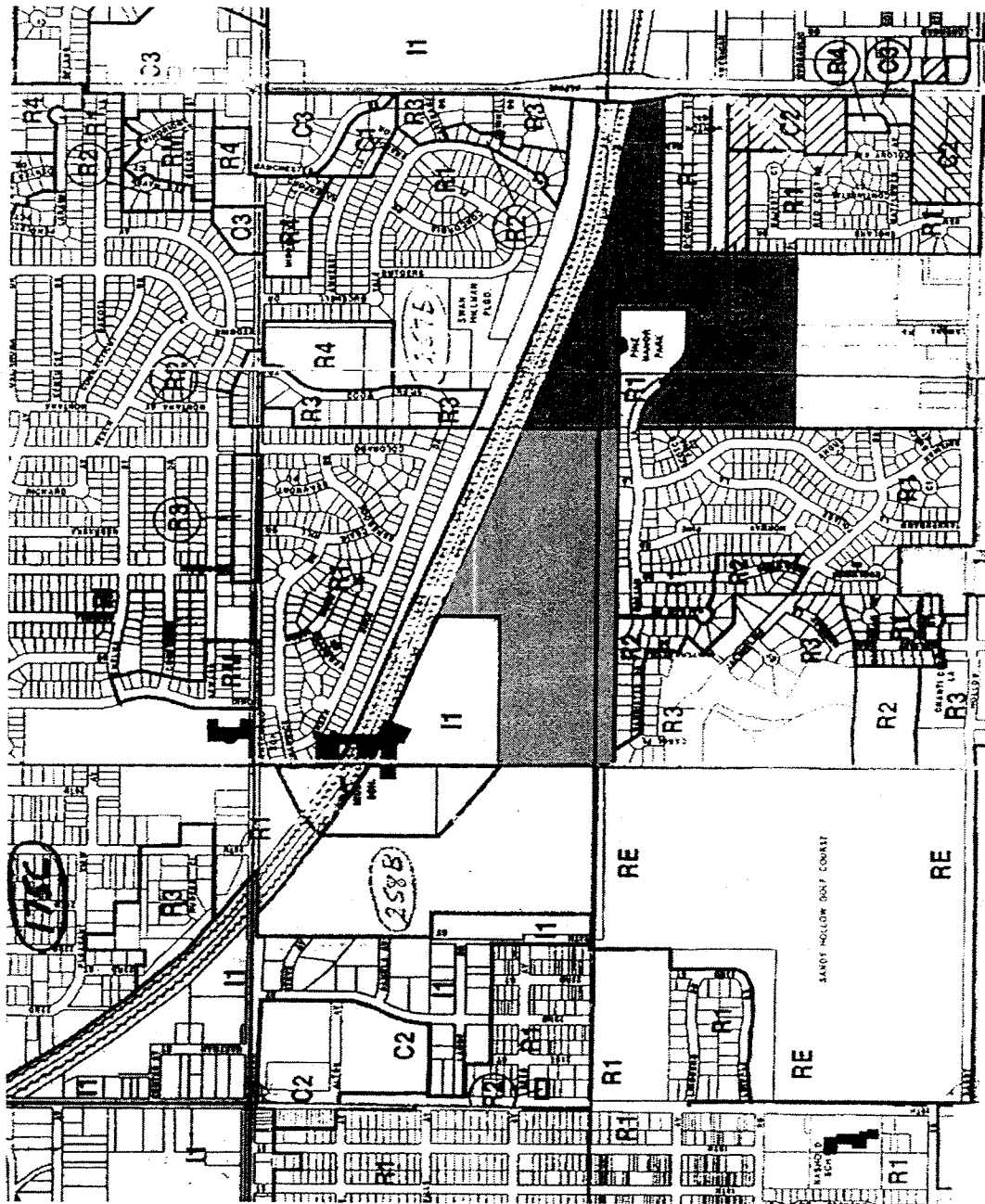
- Roads
- Rails
- Surface Water



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APPENDIX A: MAP OF THE ALPINE FARM PROPERTY AND
HELLBERG FARM PROPERTY



Map Key:

The Alpine Farm Property is shaded in this color

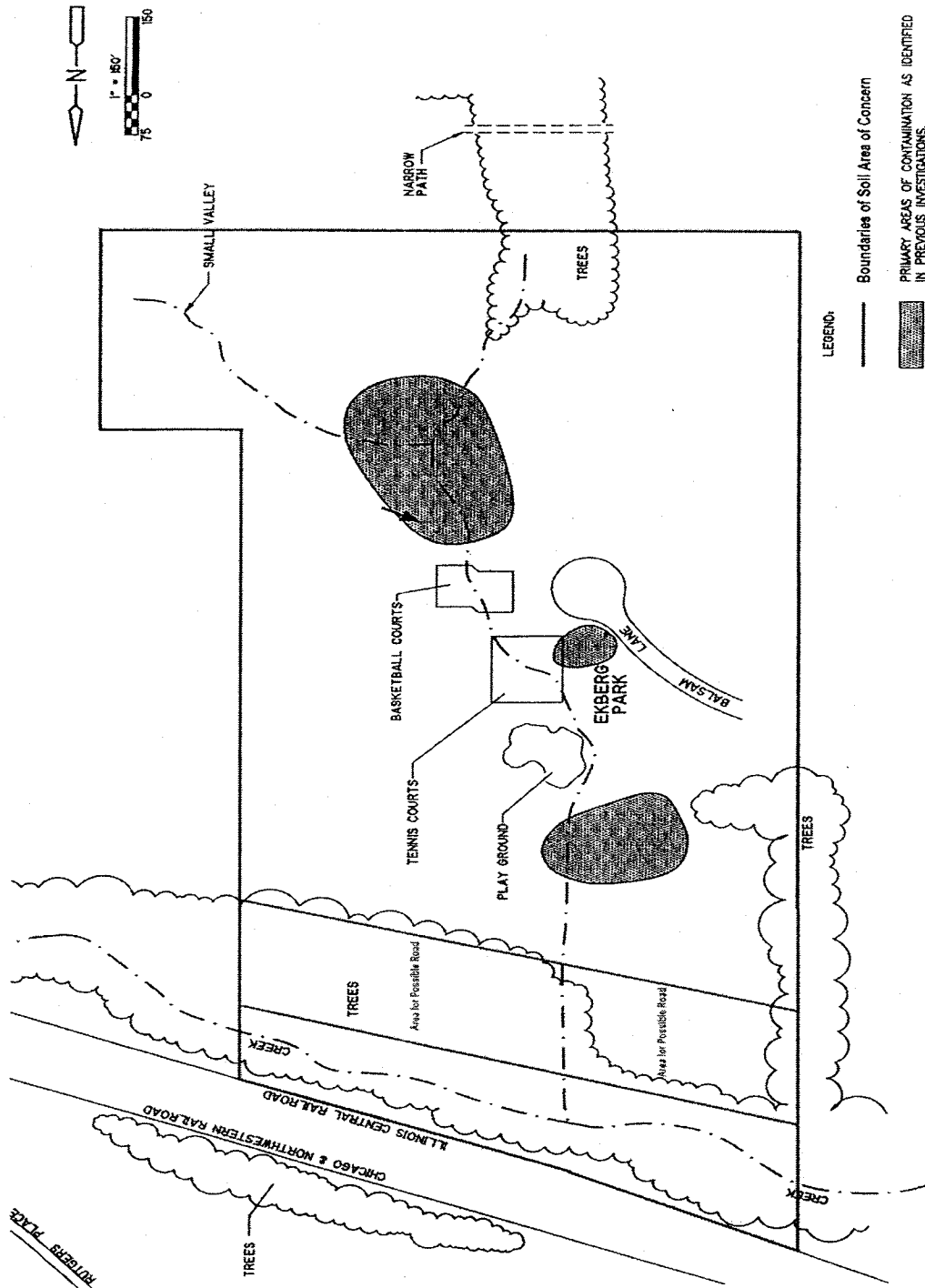


The Hellberg Farm Property is shaded in this color



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APPENDIX C: MAP OF THE SOIL AREA OF CONCERN



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 JMH
 J. E. L.
 J. E. L.

APPENDIX D: PRESCRIBED FORM OF EASEMENT

Prepared by:

Return to:

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 20____, by and between Amcore Bank, as trustee under Amcore Bank Trust No. 73-5734, (the "Grantor"), having an address of _____ and Glen W. Ekberg (the "Grantee"), having an address of _____.

for and in consideration of _____, conveys and warrants to the Grantee, _____, the real estate located in the County of Winnebago, State of Illinois, more particularly described on **Appendix 1**, which is attached hereto and made a part hereof (the "Property"), subject to a reservation of and Environmental Easement and Declaration of Restrictive Covenants more particularly described as follows:

WITNESSETH:

WHEREAS, the Grantor holds legal title to certain parcels of real property – designated as Parcel Identification Numbers 16-05-152-002, 16-05-327-006, 16-05-301-003, and 16-05-302-002 – located in the county of Winnebago, State of Illinois, more particularly described on **Appendix 1**, which is attached hereto and made a part hereof (the "Alpine Farm Property"); and

WHEREAS, the Alpine Farm Property is located in the vicinity of Source Area 7 ("Area 7") of the Southeast Rockford Groundwater Contamination Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,296; and

WHEREAS, in a Record of Decision dated June 11, 2002, (the "ROD"), EPA selected a "remedial action" for the Source Control Operable Unit at the Site, which provides, in part, for a remedy combining the in situ technologies of soil vapor extraction, air sparging and multi-phase extraction to work in concert to treat contaminants in unsaturated and saturated soil and leachate in Area 7; and

WHEREAS, the State of Illinois (the "State"), through the Illinois Environmental Protection Agency ("Illinois EPA"), concurred with the ROD and has taken actions to implement the ROD; and

WHEREAS, a Consent Decree in the case captioned United States v. Glen Ekberg, Case No. 01 C 50457 (N.D. Ill.) (the "Consent Decree"), requires the execution and




recording of this instrument, in order to: (i) grant a permanent right of access over the Property for purposes of implementing, facilitating and monitoring any removal and/or remedial action at the Site; (ii) impose certain permanent water use restrictions for all portions of the Alpine Farm Property, as required in accordance with Consent Decree Subparagraph 12.b, as covenants that will run with the land for purposes of implementing, facilitating and monitoring any removal and/or remedial action at the Site and thereby protecting human health and the environment; and (iii) impose certain permanent land use restrictions for the portion of the Alpine Farm Property that has been designated as the Soil Area of Concern (more particularly described on **Appendix 2**, which is attached hereto and made a part hereof), as required in accordance with Consent Decree Subparagraph 12.b, as covenants that will run with the land for purposes of implementing, facilitating and monitoring any removal and/or remedial action at the Site and thereby protecting human health and the environment.

NOW, THEREFORE:

1. **GRANT:** Grantor (on its own behalf and on behalf of its successors and assigns), in consideration of the foregoing and the specific agreements hereinafter made by Grantee, does hereby covenant and declare that the Alpine Farm Property shall be subject to the right of access and the restrictions on use set forth below, and does give, grant, and convey to the Grantee, and his heirs, successor, and assigns, with general warranties of title: (i) the perpetual right to enforce said use restrictions, and (ii) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Alpine Farm Property.

2. **THIRD PARTY BENEFICIARIES:** Grantor (on its own behalf and on behalf of its successors and assigns) and the Grantee (on his own behalf and on behalf of his heirs, successors and assigns) hereby agree that the United States, acting by and through EPA, and its successors and assigns, and the State of Illinois, acting by and through Illinois EPA, and its successors and assigns, shall be Third Party Beneficiaries of all the benefits and rights of the easements, restrictions, covenants, exceptions, notifications, conditions and agreements herein, and that the Third Party Beneficiaries shall have the right to enforce the easements and restrictions described herein.

3. **PURPOSE:** The purpose of this reservation is to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination; to protect human health and the environment by reducing the risk of exposure to contaminants; to provide for the long-term protectiveness of the remedial action; and to accomplish these goals in a manner that allows the redevelopment and beneficial reuse of the Alpine Farm Property to the extent reasonably possible.

4. **RESTRICTIONS ON USE:** The parties intend that the restrictions and covenants that follow apply to the use of the Alpine Farm Property, run with the land for the benefit of the Grantee and the Third Party Beneficiaries, and are binding upon: (i) the Grantee and his heirs, successors, and assigns or persons acting under their direction and control; and (ii) any future owners, occupants or other persons acquiring an interest in the Alpine Farm Property and their authorized agents, employees, or persons acting under their direction and control.

a) **No interference with remedy:** There shall be no interference of any sort, with the construction, operation, maintenance, monitoring, efficacy, or physical integrity of any

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component, structure, or improvement resulting from or relating to the remedial action on the Alpine Farm Property.

b) Land uses in the Soil Area of Concern: No action shall be taken that would cause covered waste materials to become exposed in the portion of the Alpine Farm Property designated as the Soil Area of Concern, more particularly described on **Appendix 2**.

c) Ground water uses: No activities shall be conducted on the Alpine Farm Property that extract, consume, or otherwise use any groundwater from the Alpine Farm Property, unless approved by EPA with Illinois EPA concurrence nor shall any wells be constructed on the Alpine Farm Property for purposes other than ground water monitoring, unless approved by EPA with Illinois EPA concurrence.

___) [Insert any other land/water use restrictions required by EPA in accordance with Consent Decree Subparagraph 12.b.]

___) Effective date of restrictions: The foregoing restrictions on use of the Alpine Farm Property are subject to applicable statutes, ordinances, rules and regulations, and take effect upon the date of execution of this document and remain in effect until both EPA and Illinois EPA issue a written determination to either modify or terminate the conditions and restrictions pursuant to Paragraph 5 below.

5. MODIFICATION OF RESTRICTIONS: The restrictive covenants in the preceding subparagraphs shall continue unless and until EPA, with the concurrence of Illinois EPA, approves the modification or rescission of these restrictive covenants. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 4.a- 4. ___ in writing, as authorized by law. The owner of a pertinent portion of the Alpine Farm Property may seek to modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 4.a- 4. ___ by submitting to EPA and Illinois EPA a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and any proposed revisions to the environmental easement/restrictive covenants in this instrument. Each application for termination or modification of any restriction set forth in subparagraphs 4.a- 4. ___ shall include a demonstration by the owner of the pertinent portion of the Alpine Farm Property that the requested termination or modification will not interfere with, impair or reduce: (i) the effectiveness of the remedial action at undertaken at the Site; (ii) the long term protectiveness of the remedial action; or (iii) protection of human health and the environment. If EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (i) through (iii), above, EPA will notify the owner of the pertinent portion of the Alpine Farm Property in writing. Any modification of these restrictive covenants shall be recorded with Winnebago County Recorder of Deeds.

6. ENVIRONMENTAL EASEMENT: Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes listed below:

a) Allowing EPA and its designees (including Illinois EPA) to implement the response actions in the ROD, including but not limited to designing and performing needed pilot tests, and installing, utilizing and maintaining all sampling systems and remediation systems;



- b) Allowing EPA and its designees (including Illinois EPA) to verify any data or information submitted to EPA or Illinois EPA;
- c) Allowing EPA and its designees (including Illinois EPA) to verify that no action is being taken on the Alpine Farm Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Allowing EPA and its designees (including Illinois EPA) to monitor response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Allowing EPA and its designees (including Illinois EPA) to conduct periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Allowing EPA and its designees (including Illinois EPA) to implementing additional or new response actions if EPA, in its sole discretion, determines (i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, (ii) that the additional or new response actions will not impose any significantly greater burden on the Alpine Farm Property or unduly interfere with the then existing uses of the Alpine Farm Property.

7. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect EPA's or the Illinois EPA's or the Illinois Attorney General's rights of entry and access or EPA's or the Illinois EPA's or the Illinois Attorney General's authority to take response actions under CERCLA, the National Contingency Plan, or other federal or state law.

8. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

9. NOTICE REQUIREMENT FOR TRANSFER OF PROPERTY: Grantee agrees to include in any instrument conveying any interest in any portion of the Property, including, but not limited to deeds, leases and mortgages, a notice in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, DATED _____, 20__, RECORDED IN
THE PUBLIC LAND RECORDS ON _____, 20__, IN
BOOK _____, PAGE _____, THAT IS ENFORCEABLE BY
THE UNITED STATES OF AMERICA.**

10. ADMINISTRATIVE JURISDICTION: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the U.S. EPA and any successor departments or agencies of the United States. The state agency having

administrative jurisdiction over the interests acquired by the State of Illinois by this instrument is the Illinois EPA and any successor departments or agencies of the State of Illinois.

11. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth in Paragraph 6 and 7 above, the United States and the State of Illinois may enter the Property from time to time for the purposes of performing inspections, overseeing remedy implementation or enforcing the restrictions set forth in subparagraphs 4.a-4. ___ above. The United States and the State of Illinois as Third Party Beneficiaries shall be entitled to enforce the terms of this instrument in a judicial action seeking specific performance or other applicable remedies at law or in equity. The right to so enforce the conditions and restrictions in this instrument are in addition to any other remedies that may be available, including, but not limited to, remedies under CERCLA. Enforcing the terms of this instrument shall be at the discretion of the United States or the State and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this Agreement shall not be deemed a waiver by the United States or the State of such terms, or any other term, or any rights of the Grantor or Grantee or the Third Party Beneficiaries under this instrument. The easement and covenants shall inure to the benefit of the public in general and the Alpine Farm Property and are enforceable by the United States and the State of Illinois.

12. DAMAGES: The United States and the State shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

13. RESERVATION OF CERTAIN DEFENSES: Nothing in this instrument shall be construed to enlarge the jurisdiction of federal courts or to create subject matter jurisdiction to adjudicate any claims against EPA and the Illinois EPA or otherwise operate as a waiver of any sovereign immunity of the United States and the State of Illinois, and the United States and the State of Illinois expressly reserve all rights and defenses they may have in connection with any action relating to this instrument.

14. WAIVER OF CERTAIN DEFENSES: Grantor hereby waives any defense of laches, estoppel, or prescription.

15. COVENANTS:

a) Grantor and Grantee hereby covenant to and with the United States and its assigns, that the Grantor is lawfully seized in fee simple of the Alpine Farm Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Alpine Farm Property is free and clear of encumbrances, except those noted on **Appendix 3** attached hereto, and that the Grantee will forever warrant and defend the title thereto and the quiet possession thereof.

b) The Grantee (on his own behalf and on behalf of his heirs, successors and assigns), covenants that he will not undertake or allow any activity on or use of the Alpine Farm Property that would violate the land or water use restrictions contained herein.

16. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:



To Grantor:

To Grantee:

To EPA:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

17. GENERAL PROVISIONS:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by Illinois state law.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document,

identified as "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

18. APPENDICES:

- Appendix 1 - Legal description of the Alpine Farm Property
- Appendix 2 - Legal description of the Soil Area of Concern
- Appendix 3 - Permitted title encumbrances

IN WITNESS WHEREOF, Grantor has caused this Environmental Protection Easement and Declaration of Restrictive Covenants to be signed in its name.

Executed this _____ day of _____, 20__.

By: _____

Its: _____

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STATE OF _____)
) ss
COUNTY OF _____)

On this __ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of _____
My Commission Expires: _____.

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[Handwritten initials]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GLEN EKBERG,

Defendant.

Civil Action No. 01 C 50457

Judge Philip Reinhard

SUBSEQUENT OWNER ASSENT FORM

NO G.E.

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Background

A. The undersigned party has acquired a legal or equitable ownership interest in certain real property ("the Assenting Party's Property") that is located in the vicinity of Source Area 7 of the Southeast Rockford Groundwater Contamination Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,296.

B. In a Record of Decision dated June 11, 2002, (the "ROD"), EPA selected a "remedial action" for the Source Control Operable Unit at the Site, which provides, in part, for a remedy combining the in situ technologies of soil vapor extraction, air sparging and multi-phase extraction to work in concert to treat contaminants in unsaturated and saturated soil and leachate in Area 7. The State of Illinois (the "State"), through the Illinois Environmental Protection Agency ("Illinois EPA"), concurred with the ROD and has taken actions to implement the ROD.

C. The Assenting Party's Property is part of the "Alpine Farm Property" and/or the "Hellberg Farm Property" as those terms is defined by a Consent Decree in the case captioned United States v. Glen Ekberg, Case No. 01 C 50457 (N.D. Ill.) (the "Consent Decree"). The Consent Decree provides that:

"Alpine Farm Property" shall mean the following parcels of real property owned by the Settling Defendant within Section 5 in Township 43 North, Range 2 East of the Third Principal Meridian, in Winnebago County, Illinois, lying southerly of the Illinois Central Railroad right of way, as depicted on the map attached hereto as Appendix A: (i) Parcel Identification Number 16-05-152-002; (ii) Parcel Identification Number 16-05-327-006; (iii) Parcel Identification Number 16-05-301-003; and (iv) Parcel Identification Number 16-05-302-002.

"Hellberg Farm Property" shall mean the following parcel of real property owned by the Settling Defendant within Section 6 in Township 43 North, Range 2 East of the Third Principal Meridian, in Winnebago County, Illinois, lying southerly of the Illinois Central Railroad right of way, as depicted on the map attached hereto as Appendix A: Parcel Identification Number 16-06-276-001.

D. The Consent Decree also provides that a third party that acquires an ownership interest in all or any portion of the Alpine Farm Property or the Hellberg Farm Property after the date of lodging of this Consent Decree may agree to accept certain benefits and obligations as a "Subsequent Owner" under of the Consent Decree by providing the United States a duly-executed Subsequent Owner Assent Form. As specified by the Consent Decree, a Subsequent Owner shall, among other things: (i) be covered by Consent Decree provisions of applicable to Subsequent Owners in Consent Decree Section IX (Covenant Not to Sue By the United States), Section X (Reservations of Rights by the United States), and Section XII (Effect of Settlement/Contribution Protection); and (ii) be bound to comply with the Consent Decree requirements applicable to Subsequent Owners under Consent Decree Section VII (Access and

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Institutional Controls), Section VIII (Due Care and Cooperation), and Section XI (Covenants By Settling Defendant and Subsequent Owners).

Certain Consent Decree Provisions Applicable to Subsequent Owners

E. Solely for ease of reference, certain Consent Decree provisions applicable to Subsequent Owners are set forth below:

* * *

VII. ACCESS AND INSTITUTIONAL CONTROLS

10. Generally.

a. The Parties acknowledge that, as of the date of lodging of this Consent Decree, the Settling Defendant owns and/or controls the Alpine Farm Property and the Hellberg Farm Property, which encompass part of the Site. More specifically, as of the date of lodging, the Settling Defendant owns the sole beneficial interest in Amcore Bank Trust No. 73-5734, which holds legal title to the parcels that comprise the Alpine Farm Property. As of the date of lodging, the Settling Defendant owns a joint tenancy interest in the parcel that comprises the Hellberg Farm Property.

b. The Parties acknowledge that the Settling Defendant and any Subsequent Owner of the Alpine Farm Property or the Hellberg Farm Property will need to provide access to any portion of such property. In addition, the Parties acknowledge that the Settling Defendant and any Subsequent Owner of the Alpine Farm Property or the Hellberg Farm Property may need to accept water use restrictions for any portion of such property and may need accept land use restrictions for the Soil Area of Concern portion of the Alpine Farm Property as EPA determines that such restrictions are necessary to implement, ensure non-interference with, or ensure the protectiveness of, the removal and/or remedial measures to be performed at the Site.

11. Agreement to Provide Access and Agreement Not to Interfere with Removal or Remedial Measures to be performed at the Site.

a. Commencing on the date of lodging of this Consent Decree, the Settling Defendant and any Subsequent Owner shall provide the United States and the State and their representatives, including EPA and Illinois EPA and their contractors, with access at all times to the Alpine Farm Property and the Hellberg Farm Property for the purpose of conducting any response activity related to the Site, including, but not limited to the following activities:

- i. Monitoring, investigation, removal, remedial or other activities at the Site;
- ii. Verifying any data or information submitted to the United States or the State;

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- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Assessing Settling Defendant's or the Subsequent Owner's compliance with this Consent Decree;
- vii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and
- viii. Accessing equipment associated with the response activities for repair if it should malfunction.

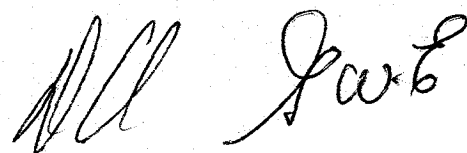
b. As provided by CERCLA Section 104(e)(4)(B), 42 U.S.C. § 9604(e)(4)(B), if EPA obtains any samples at the Alpine Farm Property or the Hellberg Farm Property, EPA shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished to the owner, operator, tenant, or other person in charge, if such person can be located. For property owned by the Settling Defendant, such samples or results shall be furnished to the Settling Defendant's designated contractor, if such person can be located.

c. Commencing on the date of lodging of this Consent Decree, the Settling Defendant (and his agents, assigns and invitees) and any Subsequent Owner (and his or her agents, assigns, and invitees) shall refrain from using the Alpine Farm Property and the Hellberg Farm Property in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the removal or remedial measures to be performed at the Site.

12. Environmental Protection Easement and Declaration of Restrictive Covenants Addressing Access Rights and Land/Water Use Restrictions.

a. The Settling Defendant shall take all actions necessary to ensure that an Environmental Protection Easement and Declaration of Restrictive Covenants (the "Easement"), in substantially the form attached hereto as Appendix F, is executed and recorded with the Winnebago County Recorder.

b. The Parties agree that the Easement shall create an easement, running with the land, that grants: (i) a right of access to all portions of the Alpine Farm Property for the purpose of conducting response activities at the Site listed in Subparagraph 11.a; (ii) a right to enforce specified restrictions on the



use of groundwater beneath all portions of the Alpine Farm Property; and (iii) a right to enforce specified restrictions on the use of the land within the Soil Area of Concern portion of the Alpine Farm Property, as depicted in the map attached as Appendix C to this Consent Decree. The Parties acknowledge that it may nonetheless be appropriate to construct a road passing through the Soil Area of Concern in the area shown on the map attached as Appendix C, so long as construction and use of the road does not interfere with or adversely affect the implementation, integrity or protectiveness of the removal and/or remedial measures to be performed at the Site.

c. The Parties agree that the Easement shall grant access rights and the rights to enforce the land/water use restrictions referenced in Subparagraph 12.b to: (i) the United States, on behalf of EPA, and its representatives, as third party beneficiaries; (ii) the State, on behalf of Illinois EPA, and its representatives, as third party beneficiaries; and/or (iii) other appropriate third party beneficiaries designated by EPA.

d. Within 60 days of the Effective Date of this Consent Decree, the Settling Defendant shall submit to EPA, for review and approval, a draft Easement conforming to the requirements outlined in this Paragraph 12.

e. After receipt of EPA's written approval of the draft Easement, the Settling Defendant shall have the Easement executed and recorded. Within 30 days of recording the Easement, Settling Defendant shall provide EPA a certified copy of the original instrument showing the clerk's recording stamps.

13. If EPA determines that land/water use restrictions as described in Subparagraph 12.b should be imposed through state or local laws, regulations, ordinances or other governmental controls to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant and any Subsequent Owner shall cooperate with EPA's and the State's efforts to secure such governmental controls. Settling Defendant or any Subsequent Owner shall record the notice of any such governmental controls within 10 days of EPA's approval of the notice. Settling Defendant or the Subsequent Owner shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

14. Required Notices Before Grant or Transfer

a. Notice to Grantees and/or Transferees. At least 15 days prior to the conveyance or transfer of any interest in any portion of the Alpine Farm Property or the Hellberg Farm Property – including, but not limited to, fee interests, leasehold interests, mortgage interests, or beneficial interests in any trust that holds legal title to such Property – the Settling Defendant or any Subsequent Owner shall give the proposed grantee or transferee a copy of the Subsequent Owner Assent Form attached as Appendix F to this Consent Decree.

b. Notice to EPA. At least 15 days prior to the conveyance or transfer of any interest in any portion of the Alpine Farm Property or the Hellberg

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Farm Property – including, but not limited to, fee interests, leasehold interests, mortgage interests, or beneficial interests in any trust that holds legal title to such Property – the Settling Defendant or any Subsequent Owner shall: (1) give EPA written notice of the proposed conveyance or transfer, including the name and address of the proposed grantee or transferee, and the date on which the party giving EPA such notice gave the proposed grantee or transferee a copy of the Subsequent Owner Assent Form attached as Appendix F to this Consent Decree

15. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities related thereto under CERCLA and any other applicable statute or regulations.

VIII. DUE CARE AND COOPERATION

16. Nothing in this Consent Decree shall be construed to relieve Settling Defendant or any Subsequent Owner of Settling Defendant's and any Subsequent Owner's duty to exercise due care with respect to hazardous substances at the Site or Settling Defendant's or any Subsequent Owner's duty to comply with all applicable laws and regulations.

17. Settling Defendant and any Subsequent Owner agree to cooperate fully with EPA and its contractors and designees in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize interference with the operations of Settling Defendant and any Subsequent Owner by such entry and response. In the event that Settling Defendant or any Subsequent Owner becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant or the Subsequent Owner shall: (i) in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release; and (ii) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release.

XI. COVENANTS BY SETTLING DEFENDANT AND SUBSEQUENT OWNERS

23. The Settling Defendant and any Subsequent Owner covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to Area 7 (including any response action taken or to be taken and response costs incurred or to be incurred to address a release or a threat of release of a hazardous substance at or from Area 7) or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112,

or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with Area 7, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Area 7.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 27 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 19.a, 19.b, 19.c, or 19.d but only to the extent that Settling Defendant's or the Subsequent Owner's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

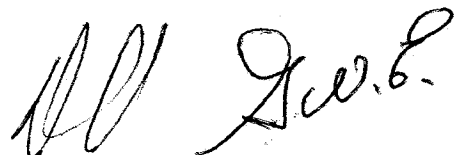
24. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

25. Waiver of Claims. The Settling Defendant and any Subsequent Owner agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Defendant or a Subsequent Owner may have against any other person if such person asserts a claim or cause of action relating to the Site against the Settling Defendant or the Subsequent Owner; nor shall it apply to any defense, claim, or cause of action arising out of action undertaken by the Settling Defendant or the Subsequent Owner in response to a release or threat of release in accordance with Paragraph 17 of this Consent Decree.

* * *

Assent to Consent Decree Provisions Applicable to Subsequent Owners

F. The undersigned party hereby acknowledges that he or she has been given an opportunity to review the Consent Decree (a copy of which is on file with the United States District Court for the Northern District of Illinois), and that he or she has had an opportunity to seek legal advice concerning the term of the Consent Decree and this Subsequent Owner Assent Form. In return for accepting the rights, covenants, and protections that the Consent Decree provides Subsequent Owners, the undersigned party hereby accepts and agrees to be legally bound by all provisions of the Consent Decree applicable to a Subsequent Owner, including the provisions of Consent Decree Section VII (Access and Institutional Controls), Section VIII (Due Care and Cooperation), and Section XI (Covenants By Settling Defendant and Subsequent Owners) applicable to a Subsequent Owner.



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G. The undersigned party certifies that he or she is fully authorized to execute this Subsequent Owner Assent Form and to accept, agree to, and legally bind such party to all provisions of the Consent Decree applicable to a Subsequent Owner.

H. The undersigned party shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of the undersigned party with respect to all matters arising under or relating to the Consent Decree or this Subsequent Owner Assent Form. The undersigned party hereby agrees to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

I. Upon executing this document, the undersigned party shall attach a formal legal description of the Assenting Party's Property to this Subsequent Owner Assent Form. The undersigned party shall then submit a duly-executed copy of this Subsequent Owner Assent Form (together with an attached legal description of the Assenting Party's Property) to the following representatives of the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-945/1)

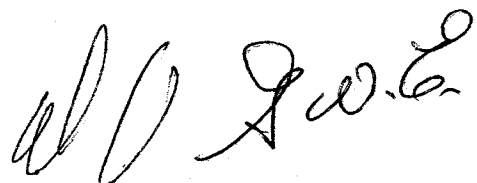
U.S. Mail:
P.O. Box 7611
Washington, D.C. 20044-7611

Overnight Delivery Service:
601 D Street, N.W. – Room 2121
Washington, DC 20004

and

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

The undersigned party shall be deemed a Subsequent Owner upon receipt of a duly-executed copy of this Form (together with an attached legal description of the Assenting Party's Property) by the United States. The United States shall thereafter file a copy of the Form with the United States District Court for the Northern District of Illinois, as a non-material modification to the Consent Decree.



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